

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4394

---

IN THE SENATE OF THE UNITED STATES

OCTOBER 3 (legislative day, SEPTEMBER 12), 1994

Received

OCTOBER 8 (legislative day, SEPTEMBER 12), 1994

Read twice and referred to the Committee on Commerce, Science, and  
Transportation

---

## AN ACT

To require State's to consider adopting mandatory, comprehensive, Statewide one-call notification systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Comprehensive One-  
5       Call Notification Act of 1994”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the following definitions  
3 apply:

4 (1) DAMAGE.—The term “damage” means any  
5 impact or contact with an underground facility, its  
6 appurtenances, or its protective coating, or weaken-  
7 ing of the support for the facility or protective hous-  
8 ing, which requires repair.

9 (2) EXCAVATION.—The term “excavation”  
10 means any operation in which earth, rock, or other  
11 material in the ground is moved, removed, or other-  
12 wise displaced by means of any mechanized tools or  
13 equipment, or any explosive, but shall not include—

14 (A) any generally accepted normal agricul-  
15 tural practices and activities taken in support  
16 thereof, as determined by each State, including  
17 tilling of the soil for agricultural purposes to a  
18 depth of 18 inches or less;

19 (B) generally accepted normal lawn and  
20 garden activities, as determined by each State;

21 (C) the excavation of a gravesite in a cem-  
22 etery; and

23 (D) routine railroad maintenance as long  
24 as such maintenance would disturb the ground  
25 to a depth of no more than 18 inches as meas-  
26 ured from the surface of the ground and the

1 railroad has rules requiring underground facili-  
2 ties other than its own to be buried 3 feet or  
3 lower on its property or along its right-of-way.

4 When a facility operator believes that its under-  
5 ground facility is not buried 3 feet or lower on rail-  
6 road property or right-of-way, the facility operator  
7 may request permission to enter the railroad prop-  
8 erty or right-of-way for the purpose of assessing the  
9 depth of such underground facility and report its  
10 finding to the railroad.

11 (3) EXCAVATOR.—The term “excavator” means  
12 a person who conducts excavation.

13 (4) FACILITY OPERATOR.—The term “facility  
14 operator” means any person who operates an under-  
15 ground facility.

16 (5) HAZARDOUS LIQUID.—The term “hazard-  
17 ous liquid” has the meaning given such term in sec-  
18 tion 60101(a)(4) of title 49, United States Code.

19 (6) NATURAL GAS.—The term “natural gas”  
20 has the meaning given the term “gas” in section  
21 60101(a)(2) of title 49, United States Code.

22 (7) PERSON.—The term “person” includes any  
23 agency of Federal, State, or local government.

24 (8) ROUTINE RAILROAD MAINTENANCE.—The  
25 term “routine railroad maintenance” includes such

1 activities as ballast cleaning, general ballast work,  
2 track lining and surfacing, signal maintenance, and  
3 the replacement of crossties.

4 (9) SECRETARY.—The term “Secretary” means  
5 the Secretary of Transportation.

6 (10) STATE.—The term “State” has the mean-  
7 ing given such term in section 60101(a)(20) of title  
8 49, United States Code.

9 (11) STATE PROGRAM.—The term “State pro-  
10 gram” means the program of a State to establish or  
11 maintain a one-call notification system.

12 (12) UNDERGROUND FACILITY.—The term  
13 “underground facility” means any underground line,  
14 system, or structure used for gathering, storing,  
15 transmitting, or distributing oil, petroleum products,  
16 other hazardous liquids, natural gas, communication,  
17 electricity, water, steam, sewerage, or any other  
18 commodities the Secretary determines should be in-  
19 cluded under the requirements of this Act, but such  
20 term does not include a portion of a line, system, or  
21 structure if the person who owns or leases, or holds  
22 an oil or gas mineral leasehold interest in, the real  
23 property in which such portion is located also oper-  
24 ates, or has authorized the operation of, the line,  
25 system, or structure only for the purpose of furnish-

1       ing services or materials to such person, except to  
2       the extent that such portion contains predominantly  
3       natural gas or hazardous liquids and—

4               (A) is located within an easement for a  
5       public road (as defined under section 101(a) of  
6       title 23, United States Code), or a toll highway,  
7       bridge, or tunnel (as described in section  
8       129(a)(2) of such title); or

9               (B) is located on a mineral lease and is  
10       within the boundaries of a city, town, or village.

11   **SEC. 3. NATIONWIDE TOLL-FREE NUMBER SYSTEM.**

12       Within 1 year after the date of enactment of this Act,  
13   the Secretary shall, in consultation with the Federal Com-  
14   munications Commission, facility operators, excavators,  
15   and one-call notification system operators, provide for the  
16   establishment of a nationwide toll-free telephone number  
17   system to be used by State one-call notification systems.

18   **SEC. 4. STATE PROGRAMS.**

19       (a) CONSIDERATION.—Each State shall consider  
20   whether to adopt a comprehensive statewide one-call noti-  
21   fication program with each element described in section  
22   5, to protect all underground facilities from damage due  
23   to any excavation. Such State program may be provided  
24   for through the establishment of a new program, or  
25   through modification or improvement of an existing pro-

1 gram, and may be implemented by a nongovernmental or-  
2 ganization.

3 (b) PROCEDURES.—State consideration under sub-  
4 section (a) shall be undertaken after public notice and  
5 hearing, and shall be completed within 3 years after the  
6 date of enactment of this Act. Such consideration may be  
7 undertaken as part of any proceeding of a State with re-  
8 spect to the safety of pipelines or other underground facili-  
9 ties.

10 (c) COMPLIANCE.—If a State fails to comply with the  
11 requirements of subsection (a), the Secretary or any per-  
12 son aggrieved by such failure may in a civil action obtain  
13 appropriate relief against any appropriate officer or entity  
14 of the State, including the State itself, to compel such  
15 compliance.

16 (d) APPROPRIATENESS.—Nothing in this Act pro-  
17 hibits a State from making a determination that it is not  
18 appropriate to adopt a State program described in section  
19 5, pursuant to its authority under otherwise applicable  
20 State law.

21 **SEC. 5. ELEMENTS OF STATE PROGRAM.**

22 (a) IN GENERAL.—Each State's consideration under  
23 section 4(a) shall include consideration of program ele-  
24 ments that—

1           (1) provide for a one-call notification system or  
2 systems which shall—

3               (A) apply to all excavators and to all facil-  
4 ity operators;

5               (B) operate in all areas of the State and  
6 not duplicate the geographical coverage of other  
7 one-call notification systems;

8               (C) receive and record appropriate infor-  
9 mation from excavators about intended exca-  
10 vations;

11              (D) inform facility operators of any in-  
12 tended excavations that may be in the vicinity  
13 of their underground facilities; and

14              (E) inform excavators of the identity of fa-  
15 cility operators who will be notified of the in-  
16 tended excavation;

17           (2) provide for 24-hour coverage for emergency  
18 excavation, with the manner and scope of coverage  
19 determined by the State;

20           (3) employ mechanisms to ensure that the gen-  
21 eral public, and in particular all excavators, are  
22 aware of the one-call telephone number and the re-  
23 quirements, penalties, and benefits of the State pro-  
24 gram relating to excavations;

1           (4) inform excavators of any procedures that  
2           the State has determined must be followed when ex-  
3           cavating;

4           (5) require that any excavator must contact the  
5           one-call notification system in accordance with State  
6           specifications, which may vary depending on whether  
7           the excavation is short term, long term, routine, con-  
8           tinuous, or emergency;

9           (6) require facility operators to provide for lo-  
10          cating and marking or otherwise identifying their fa-  
11          cilities at an excavation site, in accordance with  
12          State specifications, which may vary depending on  
13          whether the excavation is short term, long term, rou-  
14          tine, continuous, or emergency;

15          (7) provide effective mechanisms for penalties  
16          and enforcement as described in section 6;

17          (8) provide for a fair and appropriate schedule  
18          of fees to cover the costs of providing for, maintain-  
19          ing, and operating the State program;

20          (9) provide an opportunity for citizen suits to  
21          enforce the State program; and

22          (10) require railroads to report any accidents  
23          that occur during or as a result of routine railroad  
24          maintenance to the Secretary and the appropriate  
25          local officials.



1 (b) EXCEPTION.—Where excavation is undertaken by  
2 or for a person, on real property owned or leased, or in  
3 which an oil or gas mineral leasehold interest is held, by  
4 that person, and the same person operates all under-  
5 ground facilities located at the site of the excavation, a  
6 State program may elect not to require that such person  
7 contact the one-call notification system before excavating.

8 **SEC. 6. PENALTIES AND ENFORCEMENT.**

9 (a) GENERAL PENALTIES.—Each State's consider-  
10 ation under section 4(a) shall include consideration of a  
11 requirement that any excavator or facility operator who  
12 violates the requirements of the State program shall be  
13 liable for an appropriate administrative or civil penalty.

14 (b) INCREASED PENALTIES.—If a violation results in  
15 damage to an underground facility resulting in death, seri-  
16 ous bodily harm, or actual damage to property exceeding  
17 \$50,000, or damage to a hazardous liquid underground  
18 facility resulting in the release of more than 50 barrels  
19 of product, the penalties shall be increased, and an addi-  
20 tional penalty of imprisonment may be assessed for a  
21 knowing and willful violation.

22 (c) DECREASED PENALTIES.—Each State's consider-  
23 ation under section 4(a) shall include consideration of re-  
24 duced penalties for a violation, that results in or could re-  
25 sult in damage, that is promptly reported by the violator.

1 (d) EQUITABLE RELIEF AND MANDAMUS AC-  
2 TIONS.—Each State’s consideration under section 4(a)  
3 shall include consideration of provisions for appropriate  
4 equitable relief and mandamus actions.

5 (e) IMMEDIATE CITATION OF VIOLATIONS.—Each  
6 State’s consideration under section 4(a) shall include con-  
7 sideration of procedures for issuing a citation of violation  
8 at the site and time of the violation.

9 **SEC. 7. GRANTS TO STATES.**

10 (a) AUTHORITY.—Using \$4,000,000 of the amounts  
11 previously collected under section 7005 of the Consoli-  
12 dated Omnibus Budget Reconciliation Act of 1985 (pre-  
13 viously codified as 49 U.S.C. App. 1682a) or section  
14 60301 of title 49, United States Code, for each of the fis-  
15 cal years 1996, 1997, and 1998, to the extent provided  
16 in advance in appropriations Acts, the Secretary shall  
17 make grants to States, or to operators of one-call notifica-  
18 tion systems in such States, which have elected to adopt  
19 a State program described in section 5, or to establish and  
20 maintain a State program pursuant to subsection (b) of  
21 this section. Such grants may be used in establishing one-  
22 call notification systems, modifying existing systems to  
23 conform to standards established under this Act, and im-  
24 proving systems to exceed such standards. Such grants  
25 may be used to—

1 (1) improve communications systems linking  
2 one-call notification systems;

3 (2) improve location capabilities, including  
4 training personnel and developing and using location  
5 technology;

6 (3) improve record retention and recording ca-  
7 pabilities;

8 (4) enhance public information and education  
9 campaigns;

10 (5) increase and improve enforcement mecha-  
11 nisms, including administrative processing of viola-  
12 tions; and

13 (6) otherwise further the purposes of this Act.

14 (b) ALTERNATE FORM OF STATE PROGRAM.—The  
15 Secretary may make a grant under subsection (a) to a  
16 State that establishes or maintains a State program that  
17 differs from a State program described in section 5 if such  
18 State program is at least as protective of the public health  
19 and safety and the environment as a State program de-  
20 scribed in section 5.

21 **SEC. 8. DEPARTMENT OF TRANSPORTATION.**

22 (a) COORDINATION WITH OTHER RESPONSIBIL-  
23 ITIES.—

24 (1) COORDINATION.—The Secretary shall co-  
25 ordinate the implementation of this Act with the im-

1       plementation of chapter 601 of title 49, United  
2       States Code.

3               (2) REVIEW OF PROGRAMS.—Within 18 months  
4       after the date of enactment of this Act, the Sec-  
5       retary shall review, and report to Congress on, the  
6       extent to which any policies, programs, and proce-  
7       dures of the Department of Transportation could be  
8       used to achieve the purposes of this Act.

9       (b) MODEL PROGRAM.—

10              (1) DEVELOPMENT.—Within 1 year after the  
11       date of enactment of this Act, the Secretary, in con-  
12       sultation with facility operators, excavators, one-call  
13       notification system operators, and State and local  
14       governments, shall develop and make available to  
15       States a model State program, including a model en-  
16       forcement program. Such model program may be  
17       amended by the Secretary on the Secretary's initia-  
18       tive or in response to reports submitted by the  
19       States pursuant to section 9, or as a result of work-  
20       shops conducted under paragraph (3) of this sub-  
21       section.

22              (2) SUGGESTED ELEMENTS.—The model pro-  
23       gram developed under paragraph (1) shall include all  
24       elements of a State program described in section 5.

1       The Secretary shall consider incorporating the fol-  
2       lowing elements into the model program:

3               (A) The one-call notification system or sys-  
4       tems shall—

5                       (i) receive and record appropriate in-  
6       formation from excavators about intended  
7       excavations, including—

8                               (I) the name of the person con-  
9       tacting the one-call notification sys-  
10      tem;

11                              (II) the name, address, and tele-  
12      phone number of the excavator;

13                              (III) the specific location of the  
14      intended excavation, along with the  
15      starting date thereof and a description  
16      of the intended excavation activity;  
17      and

18                              (IV) the name, address, and tele-  
19      phone number of the person for whom  
20      the work is being performed; and

21                       (ii) maintain records on each notice of  
22      intent to excavate for the period of time  
23      necessary to ensure that such records re-  
24      main available for use in the adjudication  
25      of any claims relating to the excavation.

1 (B) The provision of information on exca-  
2 vation requirements at the time of issuance of  
3 excavation or building permits, or other specific  
4 mechanisms for ensuring excavator awareness.

5 (C) A requirement that any excavator  
6 must contact the one-call notification system at  
7 least 2 business days, and not more than 10  
8 business days, before excavation begins.

9 (D) Alternative notification procedures for  
10 excavation activities conducted as a normal part  
11 of ongoing operations within specific geographic  
12 locations over an extended period of time.

13 (E) A requirement that facility opera-  
14 tors—

15 (i) provide for locating and marking,  
16 in accordance with the American Public  
17 Works Association Uniform Color Code for  
18 Utilities, or otherwise identifying, in ac-  
19 cordance with standards established by the  
20 State or the American National Standards  
21 Institute, their underground facilities at  
22 the site of an intended excavation within  
23 no more than 2 business days after notifi-  
24 cation of such intended excavation; and

1 (ii) monitor such excavation as appro-  
2 priate.

3 (F) Provision for notification of excavators  
4 if no underground facilities are located at the  
5 excavation site.

6 (G) Provision for the approval of a State  
7 program under this Act with time limitations  
8 longer than those required under subpara-  
9 graphs (C) and (E) of this paragraph where  
10 special circumstances, such as severe weather  
11 conditions or remoteness of location, pertain.

12 (H) Procedures for excavators and facility  
13 operators to follow when the location of under-  
14 ground facilities is unknown.

15 (I) Procedures to improve underground fa-  
16 cility location capabilities, including compiling  
17 and notifying excavators, facility operators, and  
18 one-call centers of any information about pre-  
19 viously unknown underground facility locations  
20 when such information is discovered.

21 (J) Alternative rules for timely compliance  
22 with State program requirements in emergency  
23 circumstances.

24 (K) If a State has procedures for licensing  
25 or permitting entities to do business, procedures

1           for the revocation of the license or permit to do  
2           business of any excavator determined to be a  
3           habitual violator of the requirements of the  
4           State program.

5           (3) WORKSHOPS.—Within 6 months after the  
6           date of enactment of this Act, and annually there-  
7           after, the Secretary shall conduct workshops with fa-  
8           cility operators, excavators, one-call notification sys-  
9           tem operators, and State and local governments in  
10          order to develop, amend, and promote the model  
11          program, and to provide an opportunity to share in-  
12          formation among such parties and to recognize State  
13          programs that exemplify the goals of this Act.

14          (c) PUBLIC EDUCATION.—The Secretary shall de-  
15          velop, in conjunction with facility operators, excavators,  
16          one-call notification system operators, and State and local  
17          governments, public service announcements and other edu-  
18          cational materials and programs to be broadcast or pub-  
19          lished to educate the public about one-call notification sys-  
20          tems, including the national phone number.

21   **SEC. 9. STATE REPORTS.**

22          (a) REQUIREMENT.—

23                  (1) INITIAL REPORT.—Within 3 years after the  
24          date of enactment of this Act, each State shall sub-



1       mit to the Secretary a report on progress made in  
2       implementing this Act.

3           (2) STATUS REPORTS.—Within 4½ years after  
4       the date of enactment of this Act, and annually  
5       thereafter, each State shall report to the Secretary  
6       on the status of its State program, if any, and its  
7       requirements, and any other information the Sec-  
8       retary requires.

9           (b) SIMPLIFIED REPORTING FORM.—Within 3 years  
10      after the date of enactment of this Act, the Secretary shall  
11      develop and distribute to the States a simplified form for  
12      complying with the reporting requirements of subsection  
13      (a)(2).

14   **SEC. 10. FEDERAL REPORT.**

15       The Secretary shall report annually to Congress on  
16      the number and circumstances surrounding accidents  
17      caused by routine railroad maintenance.

18   **SEC. 11. MORE PROTECTIVE SYSTEMS.**

19       Nothing in this Act prohibits a State from imple-  
20      menting a one-call notification system that provides great-  
21      er protection for underground facilities from damage due  
22      to excavation than a system established pursuant to this  
23      Act.

1 **SEC. 12. USE OF TECHNOLOGIES FOR REMOTE AND ABOVE-**  
2 **GROUND PIPELINE LOCATION.**

3 The Secretary shall consult with other agencies as to  
4 the availability and affordability of technologies which will  
5 help relocate pipelines from above-ground and remote loca-  
6 tions.

7 **SEC. 13. VISION WAIVER STUDY PROGRAM.**

8 Pursuant to section 31136(e) of title 49, United  
9 States Code, and in order to further substantiate research  
10 carried out by the Secretary in fiscal year 1992 under the  
11 vision waiver study program, the Secretary shall carry out  
12 a follow-up study to such program to include drivers who  
13 otherwise would have qualified to participate in the initial  
14 vision waiver study but for the time limits on applications  
15 and the failure to learn of the program in a timely man-  
16 ner.

17 **SEC. 14. SENSE OF CONGRESS; REQUIREMENT REGARDING**  
18 **NOTICE.**

19 (a) PURCHASE OF AMERICAN-MADE EQUIPMENT  
20 AND PRODUCTS.—It is the sense of Congress that, to the  
21 greatest extent practicable, all equipment and products  
22 purchased with funds made available under this Act  
23 should be American-made.

24 (b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In  
25 providing financial assistance under this Act, the Adminis-  
26 trator of the Research and Special Programs Administra-

1 tion of the Department of Transportation, to the greatest  
2 extent practicable, shall provide to each recipient of the  
3 assistance a notice describing the statement made in sub-  
4 section (a).

Passed the House of Representatives October 3,  
1994.

Attest: DONNALD K. ANDERSON,  
*Clerk.*

HR 4394 RFS——2